

## U.S. Department of Justice

## Criminal Division

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June 28, 2011

Hon. Patricia S. Connor, Clerk  
U.S. Court of Appeals  
for the Fourth Circuit  
1100 East Main Street  
Suite 501  
Richmond, Virginia 23219-3517

Re: United States v. Learley R. Goodwin, et al.,  
No. 07-4059 (4th Cir.)

Dear Ms. Connor:

Pursuant to Fed. R. App. P. 28(j), please note the following supplemental authority that post-dates the filing of the government's final form brief on January 26, 2011:

DePierre v. United States, \_\_\_ S. Ct. \_\_\_, 2011 WL 2224426 (2011). In DePierre, the Supreme Court held that the term "cocaine base" as used in 21 U.S.C. § 841(b)(1) "refers generally to cocaine in its chemically basic form," not "exclusively to what is colloquially known as 'crack cocaine.'" Id. at \*2. The holding in DePierre conclusively rebuts appellants' related arguments (1) that the district court erred by not requiring the jury to make findings concerning a specific form of cocaine base; and (2) that there was an impermissible variance between the indictment and the evidence, because the government allegedly failed to establish that the cocaine base seized from some of the defendants was crack cocaine. Consolidated Final Form Opening Brief of Appellants at 91-93. Indeed, appellants acknowledged that the Supreme Court's then-pending DePierre case raised "essentially" the same issues. Opening Brief of Appellants at 93. See Final Form Brief for the United States at 37-43.

Thank you for your attention to this matter.

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Sincerely,

/s/ Daniel Steven Goodman

Daniel Steven Goodman

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